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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and for the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Estate of Bernard  
L. Madoff,

Plaintiff,

v.

MARILYN BERNFELD TRUST; HERBERT  
BERNFELD RESIDUARY TRUST, in its own  
capacity and as a partner of H&E Company – A  
Partnership and Bernfeld Joint Venture – A  
Partnership; H&E COMPANY – A PARTNERSHIP;  
MARILYN BERNFELD, in her capacity as a partner  
of H&E Company – A Partnership and Bernfeld Joint

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05143 (SMB)

Venture – A Partnership, and as a Trustee for the Marilyn Bernfeld Trust and the Herbert Bernfeld Residuary Trust; ELLEN BERNFELD, in her capacity as a partner of H&E Company – A Partnership and Bernfeld Joint Venture – A Partnership; and THOMAS BERNFELD, in his capacity as a partner of H&E Company – A Partnership and Bernfeld Joint Venture – A Partnership

Defendants.

**STIPULATION AND ORDER WITHDRAWING JUDGMENT  
BY DEFAULT AGAINST DEFENDANTS AND DISMISSING  
ADVERSARY PROCEEDING WITHOUT PREJUDICE**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated SIPA liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, and (i) Marilyn Bernfeld Trust; (ii) Herbert Bernfeld Residuary Trust, in its own capacity and as a partner of H&E Company – A Partnership and Bernfeld Joint Venture – A Partnership; (iii) H&E Company – A Partnership; (iv) Marilyn Bernfeld, in her capacity as a partner of H&E Company – A Partnership and Bernfeld Joint Venture – A Partnership, and as a Trustee for the Marilyn Bernfeld Trust and the Herbert Bernfeld Residuary Trust; (v) Ellen Bernfeld, in her capacity as a partner of H&E Company – A Partnership and Bernfeld Joint Venture – A Partnership; and (vi) Thomas Bernfeld, in his capacity as a partner of H&E Company – A Partnership and Bernfeld Joint Venture – A Partnership (“Defendants”), by and through their counsel, Timothy Wedeen of Wedeen & Kavanagh (collectively, the “Parties”), hereby stipulate and agree to the following:

1. On December 2, 2010, the Trustee filed and served the Complaint against Defendants.
2. On May 5, 2014, Defendants served an answer on the Trustee.

3. On May 18, 2016, Final Judgment by Default (“Default Judgment”) was entered against Defendants.

4. On June 9, 2017, the Parties entered into a settlement agreement (the “Settlement Agreement”) pursuant to the Settlement Procedures Order, entered by this Court on November 12, 2010 [ECF No. 3181].

5. The Parties agree that upon entry of this Stipulation and Order by the Bankruptcy Court, the Default Judgment is withdrawn.

6. In accordance with Federal Rule of Bankruptcy Procedure 7041(a)(1)(ii), and Federal Rule of Civil Procedure 41(a)(1), the Parties hereby stipulate to a dismissal without prejudice of the Trustee’s claims against Defendants in the above-captioned adversary proceeding and dismissal of the adversary proceeding without prejudice, subject to the right of the Trustee to move *ex parte* to re-open this adversary proceeding in the event of an uncured default under the terms of the Settlement Agreement. Upon the Trustee’s receipt of the full Settlement Amount as set forth in the Settlement Agreement, and provided there is no default under the Settlement Agreement, this dismissal shall be deemed with prejudice.

7. The provisions of this Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.

*[The remainder of this page intentionally left blank.]*

8. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of this Stipulation shall be deemed an original.

New York, New York  
July 25, 2017

By: /s/ Nicholas J. Cremona  
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Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Estate  
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By: /s/ Timothy Wedeen  
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Herbert Bernfeld Residuary Trust, in its own  
capacity and as a partner of H&E Company – A  
Partnership and Bernfeld Joint Venture – A  
Partnership; H&E Company – A Partnership;  
Marilyn Bernfeld, in her capacity as a partner of  
H&E Company – A Partnership and Bernfeld  
Joint Venture – A Partnership, and as a Trustee  
for the Marilyn Bernfeld Trust and the Herbert  
Bernfeld Residuary Trust; Ellen Bernfeld, in her  
capacity as a partner of H&E Company – A  
Partnership and Bernfeld Joint Venture – A  
Partnership; and Thomas Bernfeld, in his  
capacity as a partner of H&E Company – A  
Partnership and Bernfeld Joint Venture – A  
Partnership*

SO ORDERED

Dated: July 25<sup>th</sup>, 2017  
New York, New York

/s/ STUART M. BERNSTEIN  
HON. STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE